

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of)
)
ARTURO RODRIGUEZ,)
)
Respondent.)
_____)

FPPC No. 99/621

OAH No. N2001040523

DECISION

The attached Proposed Decision of the Administrative Law Judge is adopted in its entirety by the Fair Political Practices Commission as its Decision in the above-entitled matter.

This Decision shall become effective on the 11th day of December, 2001.

Dated: Dec-11, 2001

FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA



Karen Getman
Chairman

BEFORE THE
FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ARTURO RODRIGUEZ,

Respondent.

Case No. 99/621

OAH No. N2001040523

PROPOSED DECISION

Spencer A. Joe, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 7, 2001, in Sacramento, California.

Amy Bisson Holloway, Commission Counsel, represented the complainant.

There was no appearance by or on behalf of respondent Arturo Rodriguez.

Evidence was received, the record was closed and the matter was submitted. On November 16, 2001, the complainant filed a motion to conform the decision to the proof pursuant to Government Code section 11517 and 11518.5. The motion was granted.

FACTUAL FINDINGS

1. The complainant, Wayne K. Strumpfer, Executive Director of the Fair Political Practices Commission (the "Commission"), made and filed the Accusation in his official capacity.
2. Respondent assumed office as a Planning Commissioner for the City of Coachella on December 17, 1997. Respondent was required to file an Assuming Office Statement of Economic Interest disclosing his economic interest no later than 30 days after assuming office and an Annual Statement of Economic Interest no later than April 1 of each year. Respondent did not file his Assuming Office Statement of Economic Interest within 30 days nor did he file an Annual Statement of Economic Interest as required for his position.

3. On March 25, 1999, Adriane Korczmaros, a Commission staff member, sent respondent a letter reminding him that his statement was past due and that he could be fined \$10 a day, up to \$100 as a consequence. The letter also informed respondent that the Commission can waive all or part of the fine if he filed the statement within 30 days of the letter, but that it was prohibited by law from waiving the fine if the statement was filed after those 30 days. Respondent did not respond to this letter.

4. On June 11, 1999, Ms. Korczmaros mailed another letter to respondent, again advising him that he failed to submit his Assuming Office Statement of Economic Interest that was due on January 17, 1998, demanded the submission of the Assuming Office Statement of Economic Interest and the payment of the \$100 fine. Respondent was informed that if he did not respond within ten days from the date of the letter, the matter would be referred to the Commission's Enforcement Division. Respondent did not respond to this letter and he did not submit his Assuming Office Statement of Economic Interest as requested.

5. On June 23, 1999, Ms. Korczmaros mailed respondent a letter informing him that his Assuming Office Statement of Economic Interest had not been received and that his 1998 Annual Statement of Economic Interest which was due on April 1, 1999 had also not been received. Ms. Korczmaros again reiterated the fine of \$10 per day and a maximum of \$100 per statement. Respondent was informed that if he did not respond within ten days from the date of the letter, the matter would be referred to the Commission's Enforcement Division. Respondent did not respond to this letter and he did not submit either his Assuming Office Statement of Economic Interest or his Annual Statement of Economic Interest as requested.

6. On August 10, 1999, Ms. Korczmaros mailed respondent a letter demanding the completion of his Assuming Office Statement of Economic Interest and his Annual Statement of Economic Interest and the payment of the \$200 fine. Respondent was advised that his failure to respond within ten days from the date of the letter would result in the referral of the matter to the Enforcement Division and may subject him to a fine of up to \$2,000 per violation. Respondent did not respond to this letter.

7. On October 1 and 4, 1999, William Motmans, a Commission investigator, left respondent telephone messages about the Statement of Economic Interest documents that had not been filed and asked respondent to call. Respondent phoned Mr. Motmans on October 4, 1999 and said that he received the Commission's previous letters, was aware of his responsibility to file the forms and that he would send them right away. He offered no excuse or explanation to Mr. Motmans as to why the documents had not been submitted. Respondent indicated that he had "unofficially" quit his position in April. Mr. Motmans advised respondent that he may be responsible for filing a Leaving Office Statement of Economic Interest document. Mr. Motmans did not give respondent a deadline except that it was to be done as soon as possible.

8. There is no evidence of mitigation or extenuation in this matter. Despite the Commission's efforts to gain respondent's compliance, respondent's Assuming Office Statement of Economic Interest, due on January 17, 1998, his Annual Statement of Economic Interest, due April 1, 1999, and his Leaving Office Statement of Economic Interest, due sometime in May 1999, have not been filed by respondent. Respondent was notified of the \$2,000 maximum fine per violation.

LEGAL CONCLUSIONS

1. The Commission is charged with the duty to administer, implement and enforce the provisions of the Political Reform Act of 1974, Government Code section 81000 through 91015.

2. Under Government Code section 81001:

"The people find and declare as follows:

"(a) State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth;

"(b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them;

"(c) Costs of conducting election campaigns have increased greatly in recent years, and candidates have been forced to finance their campaigns by seeking large contributions from lobbyists and organizations who thereby gain disproportionate influence over governmental decisions;

"(d) The influence of large campaign contributors is increased because existing laws for disclosure of campaign receipts and expenditures have proved to be inadequate;

"(e) Lobbyists often make their contributions to incumbents who cannot be effectively challenged because of election laws and abusive practices which give the incumbent an unfair advantage;

"(f) The wealthy individuals and organizations which make large campaign contributions frequently extend their influence by employing lobbyists and spending large amounts to influence legislative and administrative actions;

"(g) The influence of large campaign contributors in ballot measure elections is increased because the ballot pamphlet mailed to the voters by the state is difficult to read and almost impossible for a layman to understand; and

“(h) Previous laws regulating political practices have suffered from inadequate enforcement by state and local authorities.”

3. Government Codes section 81002 declares:

“The people enact this title to accomplish the following purposes:

“(a) Receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.

“(b) The activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials.

“(c) Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.

“(d) The state ballot pamphlet should be converted into a useful document so that voters will not be entirely dependent on paid advertising for information regarding state measures.

“(e) Laws and practices unfairly favoring incumbents should be abolished in order that elections may be conducted more fairly.

“(f) Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced.”

4. Every person who holds an office described in section 87200 is required to file with the Commission an assuming office statement (Government Code section 87202), an annual statement (Government Code section 87203) and a leaving office statement (Government Code section 87204) disclosing his or her reportable investments, interest in real property and income. Respondent's position as Planning Commissioner is within the purview of these sections.

5. Respondent's failure to submit his Assuming Office Statement of Economic Interest, his 1998 Annual Statement of Economic Interest and a Leaving Office Statement of Economic Interest was in contravention of the purposes under Government Code sections 81001 and 81002(c).

6A. Respondent's failure to submit his Assuming Office Statement of Economic Interest, was a violation of Government Code section 87202.

6B. Respondent's failure to submit a 1998 Annual Statement of Economic Interest was a violation of Government Code section 87203.

6C. Respondent's failure to submit a Leaving Office Statement of Economic Interest was a violation of Government Code section 87204.

7. During the time pertinent in this decision, Government Code section 83116 provided:

"When the Commission determines there is probable cause for believing this title has been violated, it may hold a hearing to determine if such a violation has occurred. Notice shall be given and the hearing conducted in accordance with the Administrative Procedure Act (Government Code, Title 2, Division 3, Part 1, Chapter 5, Sections 11500 et seq.). The Commission shall have all the powers granted by that chapter.

"When the Commission determines on the basis of the hearing that a violation has occurred, it shall issue an order which may require the violator to:

"(a) Cease and desist violation of this title;

"(b) File any reports, statements or other documents or information required by this title;

"(c) Pay a monetary penalty of up to two thousand dollars (\$2,000) to the General Fund of the state.

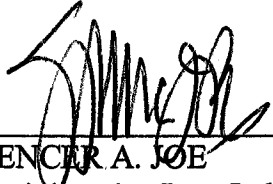
"When the Commission determines that no violation has occurred, it shall publish a declaration so stating."

8. Cause to impose a monetary penalty under Government Code section 83116 is established. Respondent received numerous notices that his statements of economic interest were due. He received numerous notices that he would be subject to monetary penalties. He was contacted by the Commission's investigator. He continued to disregard these notices and he has disregarded his obligation to file the statements as mandated under Government Code sections 87202, 87203 and 87204. There are no factors in mitigation or extenuation. Under these circumstances, it is just and appropriate that respondent be assessed a monetary penalty pursuant to Government Code section 83116(c) of two thousand dollars (\$2,000) for each violation.

ORDER

Pursuant to Legal Conclusions 1 through 8, respondent Arturo Rodriguez shall pay a monetary penalty of two thousand dollars (\$2,000) for each violation, a total of six thousand dollars (\$6,000), to the General Fund of the State of California.

Dated: November 19, 2001



SPENCER A. JOE
Administrative Law Judge
Office of Administrative Hearings